

Mortgagor:
Mortgagee:

Project #
Project Name:

Building Loan Agreement

U.S. Department of Housing and Urban Development

THIS AGREEMENT, made the _____ day of _____ 20____, by and between _____, a[n individual, corporation, LP, GP, LLC or other] organized and existing under the laws of _____ with an office and place of business in, _____ County of _____ and State of _____ (hereinafter called the "Mortgagor"), and _____ a [corporation, LP GP, LLC or other] organized and existing under the laws of, having an office and place of business at _____ County of _____ and State of _____ (hereinafter called the "Mortgagee").

WHEREAS, the Mortgagor, as the owner in fee simple of or the owner of the leasehold estate in the property described in Exhibit "A" attached to the Deed of Trust or Mortgage (hereinafter called the "Mortgage"), which Exhibit "A" is attached hereto and incorporated herein by reference, has applied to the Mortgagee for a mortgage loan of _____ Dollars (\$ _____) to aid the Mortgagor in the construction on said property of a project (identified as HUD Project No. _____) in accordance with Drawings and Specifications hereinafter referred to, and

WHEREAS, the Mortgagor understands that the Mortgagee has received a commitment from the Department of Housing and Urban Development (hereinafter called "HUD") for insurance of said loan under the provisions of the National Housing Act and intends upon execution of the hereinafter-mentioned Note and Mortgage to have said Note endorsed for insurance by HUD. HUD is not making the loan described in this agreement.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set out and of other valuable consideration, the receipt of which is hereby acknowledged, the undersigned agree as follows:

(1) The Mortgagee shall make and the Mortgagor shall take a building loan in the principal sum of

Dollars (\$ _____), to be advanced as hereinafter provided, and to bear interest from the date of _____ each advance at the rate of _____ percent (_____ %) per annum. Said loan shall be evidenced by a credit instrument (hereinafter called the "Note") dated the _____ day of 20____, shall be payable in monthly installments, and shall have a maturity date of _____. Said Note shall be executed by the Mortgagor and payable to the Mortgagee, or order, and shall be secured by a Mortgage, of even date, on the property described in the Mortgage. The Mortgage shall constitute a valid first lien on said property and the improvements to be erected thereon, and the only lien thereon except for liens for taxes and assessments not yet payable and other liens acceptable to the Mortgagee and HUD.

(2) The Mortgagor shall complete on the aforesaid property, by _____ 20____, a project in accordance with Drawings and Specifications filed with HUD and designated HUD Project No. _____, dated _____, last revised _____ (date). Such Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A201, 1997 edition), have been identified by the Mortgagor, the Design Architect, the Architect administering the Construction Contract (hereinafter called the "Architect"), the Contractor and the Contractor's Surety.

(3) Changes in the Drawings and Specifications, or changes by altering or adding to the work contemplated, or orders for extra work must have the prior written approval of the Architect. In addition, any such change or order which will result in a net construction cost increase, or will change the design concept, or will result in a net cumulative construction cost decrease of more than 2% of the contract amount may be effected only with the prior written approval of the Mortgagee and HUD and under such

conditions as either the Mortgagee or HUD may establish.

(4) (a) The Mortgagor shall make monthly applications on HUD Form No. _____ for advances of mortgage proceeds from the Mortgagee. Applications for advances with respect to construction items shall be for amounts equal to (i) the total value of classes of the work acceptably completed; plus (ii) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; less (iii) 10 percent (holdback) and less prior advances. The "values" of both (i) and (ii) shall be computed in accordance with the amounts assigned to classes of the work in the "Contractor's and/or Mortgagor's Cost Breakdown", attached to the Construction Contract and made a part hereof. Each application shall be filed at least _____ days before the date the advance is desired, and the Mortgagor shall be entitled thereon only to such amount as may be approved by the Mortgagee and HUD.

(b) Upon completion of the improvements, including all landscape requirements and off-site utilities and streets, the Mortgagor shall furnish to the Mortgagee and HUD satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction; and that all requisite certificates of occupancy and other approvals to own and operate the Project have been issued. The balance due the Mortgagor hereunder shall be payable at such time after completion as HUD authorizes the release of the holdback. However, the Mortgagee may withhold final payment until after the expiration of any period which mechanics and materialmen may have for filing liens.

(c) The Mortgagor agrees that funds in the amount of \$_____ required for the completion of the project over and above the proceeds of the loan, which have been deposited with the Mortgagee for that purpose, shall be advanced by the Mortgagee prior to the advance of any proceeds of the loan. In the alternative, Mortgagor agrees that said funds shall be advanced by the Mortgagee as set forth in that certain Disbursement Agreement dated _____, approved by the Mortgagee and HUD, to accommodate the pro rata disbursement from multiple governmental funding sources identified therein.

(d) The Mortgagor covenants that it will hold in trust each advance hereunder for application to the items for which such advance was requested and approved.

(e) The Mortgagor agrees that the loan shall at all times remain in balance. The Mortgagee shall, in accordance with the provisions of this agreement, continue to advance to the Mortgagor funds out of the proceeds of the loan as long, as the loan remains in balance and the Mortgagor is not in default hereunder or under the Note or Mortgage. The loan shall be deemed to be in balance only when the undistributed proceeds of the loan (after provision for reserves, fees, expenses and other deposits required by the Mortgagee or HUD) equal or exceed the amount necessary (based on HUD's estimate of the cost of construction) to pay for all work completed and all materials delivered, for which payment has not been made, and the cost of completing construction of the project in accordance with the Drawings and Specifications.

(5) The Mortgagee shall advance to the Mortgagor out of the funds referred to in (4)(c) above, or out of the proceeds of the loan, amounts for application to the charges or items enumerated below, but only to the extent that such charges have accrued, or that the Mortgagor is otherwise entitled to payment on account of such items.

(a) Interest during construction	\$
(b) Real estate taxes during construction	\$
(c) Insurance during construction	\$
(d) HUD mortgage insurance premium	\$
(e) HUD examination fee	\$
(f) Initial service charge	\$

(g) Title and recording expense	\$
(h) Inspection fee	\$
(i) _____	\$
(j) _____	\$
(k) _____	\$

TOTAL MAXIMUM ADVANCE (Line 45 of HUD-2283 Financial Requirements for Closing) \$

(6) The Mortgagor shall cause either this instrument, waiver of liens or the construction contract under which the improvements are to be erected to be filed in the public records, if the effect thereof will be to relieve the mortgaged property from mechanics' and materialmen's liens. Before any advance hereunder, the Mortgagee may require the Mortgagor to obtain from the contractor and all subcontractors and materialmen dealing directly with the principal contractor acknowledgments of payment and releases of lien down to the date covered by the last advance, and concurrently with the final payment for the entire project. Such acknowledgments and releases shall be in the form required by local lien laws and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished for the project.

(7) The Mortgagor shall, as a condition precedent to the first advance hereunder, furnish the Mortgagee with a signed, sealed and certified, current survey of the mortgaged property and a mortgagee's title policy (or other evidence of title) in form, substance and amount satisfactory to the Mortgagee and HUD. Said policy (or other title evidence) shall be extended so as to cover each and every advance of said loan at the time of payment thereof and shall show no mechanics' or materialmen's liens against the mortgaged property. The Mortgagor shall furnish duplicate originals of said survey and title policy (or title evidence) to HUD.

(8) The Mortgagor agrees that said project shall be constructed strictly in accordance with all applicable ordinances and statutes, and in accordance with the requirements of all regulatory authorities, and any rating or inspection organization, bureau, association or office having jurisdiction. The Mortgagor further agrees that said project shall be constructed entirely on the aforesaid property and will not encroach upon any easement or right-of-way, or the land of others; and that the buildings when erected shall be wholly within the building restriction lines however established, and will not violate applicable use or other restrictions contained in prior conveyances, zoning ordinances or regulations. The Mortgagor shall furnish from time to time such evidence with respect thereto as may be required by the Mortgagee or HUD and, upon completion of construction, shall furnish a survey, signed, sealed and certified by a registered surveyor, which shows the project to be entirely on said property and to be free from any such violations.

(9) If the Mortgagor at any time prior to the completion of the project abandons the same or ceases work thereon for a period of more than 20 days or fails to complete the erection of the project strictly in accordance with the Drawings and Specifications, or makes changes in the Drawings and Specifications without first securing the written approval required by paragraph 3 hereof, or otherwise fails to comply with the terms hereof, any such failure shall be a default hereunder, and the Mortgagee, at its option, may terminate this agreement. If the Mortgagee so elects to terminate this agreement, it may use and apply any funds deposited with it by the Mortgagor, regardless of the purpose for which such funds were deposited, in such manner and for such purposes as HUD may prescribe. If the Mortgagee elects not to terminate this agreement, it may enter into possession of the premises and perform any and all work and labor necessary to complete the improvements substantially according to the Drawings and Specifications, and employ watchmen to protect the premises from injury. All sums so expended by the Mortgagee shall be deemed to have been paid to the Mortgagor and secured by the Mortgage. For this purpose the Mortgagor hereby constitutes and appoints the Mortgagee its true and lawful attorney-in-fact, with full power of substitution in the premises, to complete the project in the name of the Mortgagor. The Mortgagor hereby empowers said attorney as follows: (a) To use any funds of the Mortgagor, including

Revised March 24, 2000

any balance which may be held in escrow and any funds which may remain unadvanced hereunder for the purpose of completing the project in the manner called for by the Drawings and Specifications; (b) to make such additions, changes and corrections in the Drawings and Specifications as shall be necessary or desirable to complete the project in substantially the manner contemplated by the Drawings and Specifications; (c) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (d) to pay, settle or compromise all existing bills and claims which may be liens against the mortgaged property, or as may be necessary or desirable for the completion of the project, or for clearance of title; (e) to execute all applications and certificates in the name of the Mortgagor which may be required by any of the contract documents; (f) to prosecute and defend all actions or proceedings in connection with the mortgaged premises or the construction of the project and to take such action and require such performance as he deems necessary under the accepted guaranty of completion; and (g) to do any and every act which the Mortgagor might do in its own behalf. It is further understood and agreed that this power of attorney which shall be deemed to be a power coupled with an interest, cannot be revoked. The Mortgagor hereby assigns and quitclaims to the Mortgagee all sums unadvanced under the Mortgage and all sums due in escrow conditioned upon the use of said sums for the completion of the project, such assignment to become effective only in case of the Mortgagor's default.

(10) The Mortgagor shall provide or cause to be provided workmen's compensation insurance and public liability and other insurance required by applicable law or by the general conditions included in the Specifications. The Mortgagor further agrees to purchase and maintain fire insurance and extended coverage on the mortgaged property. All such policies shall be issued by companies approved by the Mortgagee and shall be in form and amounts satisfactory to the Mortgagee and HUD. Such policies shall be endorsed with standard mortgagee clauses making loss payable to the Mortgagee or its assigns; and may be endorsed to make loss during construction payable to the Contractor, as interest may appear. The originals of such policies shall be deposited with the Mortgagee.

(11) The Mortgagee and its agents and HUD and his agents shall, at all times during construction have the right of entry and free access to the project and the right to inspect all work done, and materials, equipment, building components and fixtures furnished, installed or stored either on or off the Project property, and to inspect all books, subcontracts and records of the Mortgagor.

(12) The Mortgagor shall execute and deliver to the Mortgagee, upon completion of the project, a security agreement and financing statement, or other similar instrument, covering all property of any kind whatsoever purchased with mortgage proceeds and concerning which there may be any doubt as to such property's being subject to the lien of the Mortgage under the laws of the state in which the project is situated.

(13) The Mortgagor shall furnish to the Mortgagee assurance of completion of the project in the form specified in the applicable HUD Regulations in effect on the date of this agreement. Such assurance of completion shall run to the Mortgagee as obligee and shall contain a provision granting to the Mortgagee the authority to assign all rights thereunder to HUD.

(14) (a) The Mortgagor understands that the wages to be paid laborers and mechanics employed in the construction of the project are required by the provisions of Section 212(a) of the National Housing Act, as amended to be not less than the prevailing wage rates for corresponding classes of laborers and mechanics employed on construction of a similar character in the locality in which the work is to be performed, as determined by the Secretary of Labor with respect to this project. The Mortgagor hereby states that it has read the aforesaid determination by the Secretary of Labor and is fully familiar with the same.

(b) The Mortgagor shall, as a condition precedent to any advance hereunder, submit to the Mortgagee (i) with each application for advance prior to the final application, certifications, in form approved by HUD, that all laborers and mechanics employed in the construction of the project whose work is covered by that or any previous application and who have been paid in whole or in part on account of said employment, have been paid at rates not less than the said prevailing wage rates; and (ii) with the final application for advance, certifications in form satisfactory to HUD, that the project has been fully constructed in accordance with the provisions of this agreement and that all laborers and mechanics

Revised March 24, 2000

employed in the construction of the completed project have been paid not less than the said prevailing wage rates. The Secretary's prevailing wage determination shall be construed to include every amendment to or modification of the determination which may be made prior to the beginning of construction or date the Mortgage is initially endorsed for insurance, whichever occurs first.

(c) The Mortgagor agrees that should any advances hereunder be ineligible for insurance under the National Housing Act by reason of (i) the nonpayment of the said prevailing wage rates, or (ii) violation of any of the applicable labor standards provisions of the Regulations of the Secretary of Labor, the Mortgagee may withhold from the Mortgagor all payments or advances payable to the Mortgagor hereunder until the Mortgagor establishes to the satisfaction of HUD that all laborers and mechanics or other persons employed in the construction of the project have been paid said prevailing wage rates and that such violation of the said Labor Standards provisions no longer exists. The written statement of any officer of the Federal Housing Administration or authorized agent of HUD declining to insure any advance of funds hereunder by reason of such nonpayment or violation shall be deemed conclusive proof that such advances are ineligible for mortgage insurance.

(d) The Mortgagor shall insert the labor standards provisions of the HUD Supplementary Conditions of the Contract for Construction in any contract made by him for the construction of the project, or any part thereof, and shall require the Contractor to insert similar provisions in each subcontract relating to the construction of the project.

(15) The Mortgagee and the Mortgagor agree that the mortgage loan shall be reduced by any amount required by the Agreement and Certification (HUD Form No.) between the parties hereto and HUD, which Agreement and Certification is incorporated herein by reference to the same extent as if set forth herein at length.

(16) The Mortgagor shall furnish such records, papers and documents relating to the project as the Mortgagee or HUD may reasonably require from time to time.

(17) The Mortgagor shall not transfer, assign or pledge any right or interest in, or title to, any funds deposited by the Mortgagor with the Mortgagee, or reserved by the Mortgagee for the Mortgagor, without the prior written approval of the Mortgagee and HUD.

(18) As used in this instrument, the term "Mortgagee" shall be deemed to include any person to whom the Note and Mortgage referred to above shall be assigned with the knowledge and consent of HUD. This instrument shall be binding upon the parties hereto and their respective successors and assigns.

(19) The Mortgagor shall cause the Architect, Contractor, Contractor's Surety and others to execute and deliver in a timely manner, all documents required by the Mortgagee and HUD for final closing. The Mortgagor shall complete the final closing no later than _____, 20____.

(20) The Mortgagor and each of its principals shall be personally liable to the Mortgagee and or HUD for any advances that are not applied or used in accord with this Agreement.

(21) HUD is not a party to this loan agreement and has no obligation to the Mortgagor or Mortgagee pursuant to this loan agreement. HUD pursuant to the mortgage insurance contract has reserved in this loan agreement the right to approve or disapprove certain actions to protect the mortgage insurance fund.

[Mortgagor's Name]

[seal & witness signature if required by law or practice]

By:

[title & capacity]

[Mortgagee's Name]

[seal & witness signature if required by law or practice]

Building Loan Agreement.Nelson/ **Confidential: Attorney Work Product for Discussion Only**
Revised March 24, 2000

By: [title & capacity]